

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

RACHELE AVERSA,

Plaintiff,

v.

DECISION AND ORDER  
05-CV-200A

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

---

**INTRODUCTION**

Plaintiff Rachele Averrsa commenced the instant action pursuant to 42 U.S.C. § 405(g), on March 24, 2005, seeking review of a final determination of the defendant, Jo Anne Barnhart, the Commissioner of Social Security (the “Commissioner”), disallowing plaintiff’s application for disability insurance benefits under the Social Security Act. Plaintiff, a former billing department manager for Verizon telephone company, claims to be disabled due to breast cancer, twice on the right side, and the effects of radiation and chemotherapy. On November 10, 2005, the Commissioner moved for judgment on the pleadings. On January 17, the plaintiff cross-moved for judgment on the pleadings. On February 28, 2007, the Commissioner filed a response memorandum.

For the reasons stated herein, the Court finds that the this matter must be remanded so that the ALJ may make specific findings as to plaintiff’s credibility with

regard to her alleged pain and limitations, specifically in light of plaintiff's substantial work history.

### **PROCEDURAL HISTORY**

On December 18, 2001, plaintiff filed an application for disability insurance benefits alleging disability since February 1999, due to breast cancer and the effects of radiation and chemotherapy treatments (Tr. 48-50, 64).<sup>1</sup> The application was denied initially (Tr. 22-25).<sup>2</sup> At plaintiff's request, an administrative hearing was held before Administrative Law Judge ("ALJ") Robert T. Harvey, at which time plaintiff appeared *pro se* and presented testimony (Tr. 204-37). ALJ Harvey considered the case *de novo* and denied plaintiff's claim on October 18, 2004 (Tr. 12-20). The ALJ's decision became the final decision of the Commissioner when the Appeals Council declined to assume jurisdiction on February 17, 2005 (Tr. 4-6). Plaintiff now seeks judicial review.

---

<sup>1</sup> "Tr." refers to the administrative transcript filed by the Commissioner as part of her answer.

<sup>2</sup> This matter is a test case in the Social Security Administration model program of modifications to the disability review process. Here, the second step of the disability claims process, i.e., reconsideration stage, is eliminated. 62 Fed. Reg. 49598-46903 (1997); see 20 C.F.R. § 404.906(b)(4). If dissatisfied with the outcome of the initial determination, a claimant may directly file a request for hearing before an administrative law judge, as described in the initial determination letter.

### **DISCUSSION**

This Court may set aside the Commissioner's decision only if it is based upon legal error or her factual findings are not supported by substantial evidence. 42 U.S.C. § 405(g). The Supreme Court has defined the term "substantial evidence," in the context of a Social Security case, as "more than a mere scintilla" and as that evidence which "a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)).

Plaintiff argues that the ALJ in this case erred because: (1) the ALJ did not properly assess the plaintiff's subjective complaints of pain and limitations as required under 20 C.F.R. § 404.1529(c)(3) and Social Security Ruling 96-7p; and (2) the ALJ improperly failed to give the plaintiff's testimony additional credence in light of her excellent work history. The Court agrees.

In making credibility findings, the ALJ should consider the claimant's work history. See Montes-Ruiz v. Chater, 129 F.3d 114 (Table), at \*2 (2d Cir.1997) ("A proper consideration of credibility should have involved considering factors such as evidence of a good work record, which this Court views as entitling a claimant to "substantial credibility." '); see also Rivera v. Schweiker, 717 F.2d 719, 725 (2d Cir.1983) (evidence of a good work record is evidence of credibility). In fact, the Second Circuit has held that an ALJ's failure to take into account a claimant's work record "when making specific findings as to [her] credibility" is "contrary" to the law in this Circuit and the Social Security Administration's rulings. Montes-Ruiz v. Chater, 129

F.3d at \*3.

Here, plaintiff worked for the same employer for over 26 years and had a good work record. The ALJ, however, did not even mention that fact in his decision. In light of plaintiff's lengthy and good work history, plaintiff's reports of pain and limitations may well be deserving of greater deference than that given by the ALJ. Hohl v. Chater, No. 95 Civ. 4479(DC), 1997 WL 651472, at \*9 (S.D.N.Y. Oct. 20, 1997). Simply put, this is not a case where the plaintiff is a malingerer. The Court therefore remands this matter so that the ALJ may make specific findings as to plaintiff's credibility with regard to her alleged pain and limitations, specifically in light of plaintiff's substantial work history.

### **CONCLUSION**

For the reasons stated, the Commissioner's motion for judgment on the pleadings is denied, the plaintiff's motion for judgment on the pleadings is granted, and the case is remanded to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further administrative proceedings consistent with this Decision and Order.

SO ORDERED.

s/ Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: March 2, 2007